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## **Terrorism Prevention**



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Director

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# State and Local Law Enforcement Contributions to Terrorism Prevention

By WILLIAM MCCORMACK, J.D.



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**O**n April 12, 1988, New Jersey State Trooper Robert Cieplensky entered the Vince Lombardi service area of the New Jersey Turnpike. He noticed a man later identified as Yu Kikumura twice begin to walk from his car to the service area, only to return to his vehicle abruptly after making eye contact with him. After Kikumura exhibited more suspicious behavior, he began to drive away. Trooper Cieplensky

ordered Kikumura to stop and then observed fresh burn marks on Kikumura's neck, bandages on his neck and hands, and a black bag in the car that contained seven empty gunpowder canisters. After noticing other questionable items in the vehicle, he arrested Kikumura. Unbeknownst to Trooper Cieplensky, he had just uncovered three lethal, homemade firebombs prepared for a major terrorist bombing on U.S. soil.<sup>1</sup>

Subsequent evidence at Kikumura's trial proved that he was a member of the Japanese Red Army, a violent terrorist organization that trained in the Bekaa Valley of Lebanon and had connections to Libyan terrorist aims. As noted by the U.S. district court judge in the case, "But for the alert and professional conduct of Trooper Cieplensky, Kikumura would have succeeded in murdering and maiming countless numbers



of people for no other reason than they are Americans.”<sup>2</sup>

Since 9/11, the U.S. government’s efforts to prevent terrorist acts have substantially increased and included many aspects of government policy, such as military, immigration, economic, intelligence, and law enforcement. Terrorism prevention has been a long-standing mandate of the FBI. Moreover, the approximately 800,000 state and local law enforcement officers like Trooper Cieplensky are on the front lines of this mission. They are the eyes and ears of the community and nation and play an essential role in preventing heinous acts of terrorism.<sup>3</sup>

### Community Eyes and Ears

On July 29, 1997, Abdelrahman Mossabah, who was

living in Brooklyn, New York, informed officers of the New York City Police Department that his roommates, Lafi Khalil and Gazi Ibrahim Abu Mezer, had bombs in their apartment and planned to detonate them soon. According to Mossabah, Abu Mezer was angry about the situation in Jerusalem and Palestine and planned to detonate the bombs in a crowded subway or bus terminal.

On July 31, 1997, officers entered Abu Mezer and Khalil’s apartment, shooting and wounding both of them after one dove to grab an officer’s gun. Officers also believed that the suspects were lunging to detonate the bombs in the apartment.

Subsequent interviews with Abu Mezer indicated that he had made five bombs to kill as many Jews as possible because

of his opposition to U.S. support for Israel. Abu Mezer also admitted that he was with Hamas and planned to bomb a subway at 8 a.m. on July 31, 1997. He advised that when he realized the police were in his apartment that morning, he wanted to blow himself up.<sup>4</sup> This case clearly illustrates a community’s law enforcement presence as an important link in thwarting a large-scale terrorist attack. Quick police action in an extremely dangerous situation likely saved lives and prevented an imminent bombing.<sup>5</sup>

### Rural Locations

Some local or state officers may believe that most international terrorism cases are like the Khalil case, affecting only big cities, such as New York, Washington, D.C., and Los Angeles. However, many international and domestic terrorists have contact with officers in rural areas all over the country. For example, on September 29, 2001, Deputy Sheriff Mark Mercer of the Skamania County, Washington, Sheriff’s Office was dispatched to a gravel pit in a rural area after a neighbor heard rapid gunfire. Deputy Mercer was alone as he approached the gravel pit and observed a group of men shooting firearms. He approached the group, talked to them, and wrote a police incident report



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that included the identities of the individuals.

Among others, Deputy Mercer identified Ali Khalid Steitiye as one of the shooters. Steitiye was a convicted felon and eventually indicted in Oregon on firearms charges. After the Skamania County sheriff saw a news report on this indictment, he called the FBI's Portland, Oregon, office to advise them of Deputy Mercer's report, which was a critical piece of information leading to one of the United States' most important post-9/11 terrorism investigations, the Portland Seven case. Subsequent investigation determined that the group, which referred to itself as Katibat Al-Mawt (the squad of death), attempted to enter Afghanistan in October 2001 to fight U.S. troops. Taped conversations with one of the defendants, Jeffrey Leon Battle, revealed that members of the group had considered killing Deputy Mercer when he encountered them in the gravel pit but decided against it because of his demeanor. Battle stated to a cooperating source, "We was up there blowin' it up.... We was lightin' it up.... We looked at it as worship because what our intentions were, to learn to shoot for. And a cop came up, and he was like hey.... You don't understand how close he was gonna get popped...."<sup>6</sup> Battle later indicated that because "the

cop was cool" and a "gun guy," they decided not to kill him. Eventually, seven individuals were indicted in this case and pled guilty to terrorism-related charges. In addition to attempting to get into Afghanistan, Battle expressed interest in targeting Jewish schools and synagogues in the Portland area.

Proactive police work also uncovered and prevented an international terrorist plot in rural Richford, Vermont, in 1987. On the night of October 23, 1987,

***...state and local law enforcement officers...are on the front lines of this mission.***

a local police chief, Richard Jewett, saw an unknown person, later identified as Walid Kabbani, walking with a black duffle-type bag. After passing Kabbani, Chief Jewett noticed a van parked with its lights off. He approached the van and gave directions to two men, Walid Mourad and George Younan, and then went back to look for Kabbani. He located Kabbani and questioned him about his reasons for being in Richford.

After Kabbani provided a suspicious story concerning his travels, the chief took him to immigration authorities at the border where he provided inconsistent statements. Chief Jewett then went back to where he first saw Kabbani and located the black duffle-type bag he had hidden. He brought the bag back to the border crossing where officials searched it and found an explosive device inside.

This discovery also led to the arrest of Kabbani's coconspirators, Mourad and Younan, the next day. Subsequent information determined that the three were members of a Lebanese terrorist group on an unknown mission in the United States. The assistant U.S. attorney in the case stated that the chief's solid police work and ability to follow his instincts most likely prevented a terrorist attack.

The Portland Seven case and the Kabbani case clearly show that international terrorism is not just a big-city problem. Officers performing duties in rural areas of the United States have proven essential in preventing such acts from occurring on U.S. soil.

### **Involvement in Criminal Acts**

Law enforcement instincts also played a role in disrupting a terrorist-financing case. In early 1995, Detective Sergeant

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Robert Fromme of the Iredell County, North Carolina, Sheriff's Office was working off duty in uniform at a discount tobacco shop when he observed Middle Eastern individuals carrying \$20,000 to \$30,000 in cash in plastic grocery bags into the store to buy cartons of cigarettes.<sup>7</sup> During the next few months, Detective Fromme documented this activity, which occurred almost daily. He realized that by shipping the cigarettes to Michigan and avoiding the heavy tax in that state, profits totaled over \$13,000 per van load.

After Detective Fromme brought the case to the Bureau of Alcohol, Tobacco, and Firearms, the FBI became involved in 1999. Investigators determined that the cigarette smugglers were using some of the proceeds of their criminal activity to fund Hizballah, a terrorist group based in Lebanon. This case, known as Operation Smokescreen, led to the indictments of 26 individuals on charges ranging from immigration violations to racketeering, material support, and terrorism.<sup>8</sup>

The FBI case agent in Operation Smokescreen stated that the defendants were full-time criminals and part-time terrorists. This case demonstrates that terrorists commit every crime imaginable in the course of supporting themselves, terrorist groups, and plots, often putting

state and local officers in the most advantageous position to detect their activities prior to an attack.

Another example includes the Jami'iyyat Ul-Islam Is-Saheeh, or JIS, terrorist cell in California. Law enforcement officials investigating a July 2005 gas station robbery in Torrance, California, found a cell phone dropped during the crime.

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Based on information in the phone, police arrested suspects and executed a search warrant at their home where they found material concerning violent Islamic extremism. The U.S. attorney in California, whose office prosecuted the case, stated, “This investigation worked because street cops recognized the value of that material.”<sup>9</sup>

The Torrance armed robbery was the latest of about a dozen perpetrated to gather money to fund terrorist attacks.

The investigation led to Kevin James who formed JIS while in prison and recruited another inmate, Levar Washington. Once Washington was released from prison, he enlisted others into the group, and they began their armed robbery spree. Targets identified for attack included military recruiting stations and a list of Jewish sites in the Los Angeles, California, area. In December 2007, James, Washington, and a third defendant, Gregory James, pled guilty to conspiring to wage war against the United States.

The JIS case demonstrates a terrorist plot in the advanced planning stages prevented by the watchful work of a local police officer. Similar to Detective Fromme, Torrance police officers discovered this plot while conducting an investigation into what they thought was a criminal act unrelated to terrorism.

### **Joint Terrorism Task Forces**

The JIS and Portland Seven cases also illustrate the importance and effectiveness of the joint terrorism task force (JTTF) concept, which has been substantially enhanced since 9/11. Every FBI field office has at least one JTTF that serves as a local or state law enforcement agency's point of contact for any terrorism-related information. By combining efforts and leveraging resources, the

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JTTF ensures that all terrorism information is properly gathered and threats are immobilized.

In the Portland Seven case, the cooperating source who recorded conversations with Jeffrey Battle was developed by an Oregon state trooper on the task force. The trooper found someone within the Portland Islamic community who had access to Battle and was willing to assist in the investigation. Those recorded conversations were essential to understanding the intent of the cell and securing successful prosecution.

Each state and local participant in a JTTF brings unique abilities and information-sharing capacities extremely important in the terrorism-prevention mission. Many task force accomplishments are by-products of this collaborative effort that has proven instrumental in the disruption of numerous terrorist plots since 9/11.

### **Fragility of Plots**

One of the most difficult issues facing law enforcement officers when serving as first preventers, rather than first responders, is that the terrorist attacks they prevent may not become apparent to them. Although it is difficult to measure such an intangible accomplishment as the deterrence of a criminal or terrorist act, many instances probably have occurred in which a state or local

officer unknowingly prevented one.

Even the 9/11 attack could have failed because of some hurdle or roadblock posed by law enforcement. The 9/11 Commission Report states that Khalid Sheikh Mohammed, the chief planner of 9/11, might have cancelled the operation if he had known of Zacarias Moussaoui's arrest in Minneapolis in August 2001. In addition, tension existed between two of the 9/11 pilots, Ziad Jarrah and



Mohamed Atta. Jarrah flew to Germany and saw his girlfriend in late July 2001 and may have been contemplating withdrawing from the attack.

While speaking at the FBI National Academy, an Israeli police chief stated that when suicide attacks in Israel were at their peak, Israeli police often would receive vague information that an attacker was on the way to their jurisdiction to carry out an attack. Among other

tactics, the police frequently sent all available officers to the border area to "make noise," or make their presence known. The chief did not know for certain that these displays of police presence were successful, but he considered them useful. Some terrorism-prevention police work in the United States is based on this same notion of making noise. Police presence in subways or train stations, for example, may convince potential attackers to delay or abandon their plans. Any police encounter or perceived presence can potentially slow down or prevent an attack.

### **Traffic Stops**

One of the most common ways a state or local officer likely will encounter a terrorism suspect is during a traffic stop. Although the 9/11 hijackers only were in the United States for relatively short periods of time, officers had stopped all but one for various reasons. On April 26, 2001, Mohamed Atta was stopped pursuant to a driver's license checkpoint and received a citation from the Broward County, Florida, Sheriff's Office for driving without a license. Atta obtained a Florida driver's license 6 days later. He again was stopped on July 5, 2001, by the Delray Beach, Florida, Police Department and received a written warning for speeding. On 9/11, he piloted



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American Airlines Flight 11 as it hit the North Tower of the World Trade Center.

Hani Hanjour flew American Airlines Flight 77 into the Pentagon on 9/11. He had received a speeding ticket from the Arlington County, Virginia, Police Department on August 1, 2001.

Ziad Jarrah was at the controls of United Airlines Flight 93, which crashed in Pennsylvania on 9/11. A Maryland State Police trooper had stopped him for speeding on September 9, 2001, as Jarrah made his way to Newark, New Jersey, where Flight 93 originated.

Two of the nation's most notorious domestic terrorists, Timothy McVeigh and Eric Robert Rudolph, were arrested by police officers involved in traffic stops and patrol duties. On April 19, 1995, Oklahoma Highway Patrol Officer Charles Hangar stopped McVeigh, who was leaving the Oklahoma City area after bombing the Alfred P. Murrah Federal Building. McVeigh had no license plate on his car, and Patrol Officer Hangar subsequently arrested him for carrying a loaded firearm. Just before his release on the gun charge, the FBI identified him as a suspect in the bombing and located him in jail.

Eric Rudolph, more commonly known as the Olympic Park Bomber, was wanted in

connection with a series of bombings, including one at the Olympics in Atlanta, Georgia; two at abortion clinics; and another at a nightclub. At two of the bombings, he left secondary devices designed to kill first responders, and, at his last bombing in 1998, an explosive device killed Officer Robert Sanderson.

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***These new instruments and the proactive nature of state and local law enforcement authorities...support an essential role in preventing future terrorism.***  
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In 1998, Rudolph was named as a suspect in the bombings, and a massive manhunt began that centered on his home in Murphy, North Carolina. On May 31, 2003, nearly 5 years later, Officer Jeffrey Postell of the Murphy Police Department was investigating a possible burglary behind a grocery store at 4 a.m. He turned off his patrol car lights, quickly drove around the building, and surprised Rudolph, who was looking for food in the store's dumpster.

### **Terrorism Screening Center**

One of the most powerful and important information-sharing systems available to state and local law enforcement is the Terrorism Screening Center, or TSC, which maintains a consolidated database of the names and identifying information for all known and suspected terrorists. Information from this database is entered into the FBI's National Crime Information Center (NCIC) and available whenever a law enforcement officer runs a wanted query on a suspect. If officers encounter someone in the database, NCIC most commonly advises them to conduct their investigative activity without letting the individual know they are listed as a known or suspected terrorist. These types of encounters can provide valuable information about a terrorism suspect, such as travel patterns, companions, and other information gathered by the officer. In rare circumstances, the NCIC entry will request the arrest or detention of suspects based on their terrorist acts. However, in the majority of cases, the encounter with a known or suspected terrorist in the TSC database serves as a tool to collect information for officials to use in intelligence analysis and possible criminal prosecution.

The potential power of the TSC is evident in one of the



missed opportunities prior to 9/11. Nawaf Alhazmi, one of the hijackers aboard United Airlines Flight 93, was known to U.S. intelligence agencies prior to 9/11 and listed in a U.S. Department of State database for terrorists. On May 1, 2001, Alhazmi reported to the Fairfax County, Virginia, Police Department that he was the victim of an assault. Officers took a report on the incident but were not aware that Alhazmi was known to U.S. intelligence as a possible al Qaeda member. Today, an individual like Alhazmi will be in NCIC, advising officers running a wanted query that they are dealing with a known or suspected terrorist.

## Conclusion

The ways in which state and local law enforcement personnel continue to assist in the effort to prevent terrorist attacks is multifold and extremely critical to thwarting atrocities and protecting citizens. Officers always have been on the cutting edge of this mission, and, now, they have better tools at their disposal to sharpen that edge.

Officers encounter known and suspected terrorists in urban areas, as well as rural ones. With the growth of the joint terrorism task force concept and the information sharing of the Terrorism Screening Center, obtaining and analyzing information is substantially enhanced.

These new instruments and the proactive nature of state and local law enforcement authorities have played and will continue to support an essential role in preventing future terrorism. ♦

## Endnotes

<sup>1</sup> *U.S. v. Kikumura*, 918 F.2d 1084 (2nd Cir. 1990).

<sup>2</sup> *U.S. v. Kikumura*, 706 F. Supp. 331 (D.N.J. 1989).

<sup>3</sup> For additional information, see Earl M. Sweeney, "The Patrol Officer: America's Intelligence on the Ground," *FBI Law Enforcement Bulletin*, September 2005, 14-21.

<sup>4</sup> *U.S. v. Khalil*, 214 F.3d 111 (2nd Cir. 2000).

<sup>5</sup> The Khalil case led to an investigation by the U.S. Department of Justice, Office of the Inspector General, concerning immigration issues surrounding Abu Mezer and Khalil. The Inspector General's report in March 1998, "Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States," concluded that the case exposed pervasive and long-standing weaknesses in the immigration process. Abu Mezer illegally entered the United States from Canada at least three times. After the third instance, Canada refused to take him back, and Abu Mezer was released by the U.S. immigration judge on \$5,000 bail.

<sup>6</sup> <http://www.humanevents.com/article.php?id=12329>

<sup>7</sup> For additional information, see Robert Fromme and Rick Schwein, "Operation Smokescreen: A Successful Interagency Collaboration," *FBI Law Enforcement Bulletin*, December 2007, 20-25.

<sup>8</sup> *Ibid*; and Dean T. Olsen, "Financing Terror," *FBI Law Enforcement Bulletin*, February 2007, 1-5.

<sup>9</sup> "Thwarting Terror," *Newsweek*, December 15, 2007.

## Wanted: Photographs



The *Bulletin* staff is always looking for dynamic, law enforcement-related photos for possible publication in the magazine. We are interested in photos that visually depict the many aspects of the law enforcement profession and illustrate the various tasks law enforcement personnel perform.

We can use color prints, digital photographs, or slides. It is our policy to credit photographers when their work appears in the magazine. Contributors should send duplicate, not original, prints as we do not accept responsibility for damaged or lost prints. Send photographs to:

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## Organizational Ethics Through Effective Leadership

By Brandon V. Zuidema, M.S.,  
and H. Wayne Duff, Jr., M.S.



**M**embers of the law enforcement profession find it disheartening when officers make unethical decisions. And, studies pertaining to police corruption and dishonest behavior have not resulted in a consensus concerning why the issue exists or how best to address it. However, an organization's prevalence of corruption can correlate with the quality of its leaders. To this end, agencies should strive to develop strong, ethical leadership to deter this problem in their ranks.

### Facilitating an Ethical Workforce

To help discourage corruption among law enforcement personnel, departments must incorporate an organizationwide emphasis on ethical behavior, beginning with leaders. However, this does not entail a "do this or else" approach but, rather, an understanding of what constitutes ethical decision making and why it is critical to policing.

Through repetition, this emphasis can become as much a part of day-to-day functioning as the agency's policies and procedures.

Law enforcement leaders can encourage ethical behavior among personnel in several ways. First, they should incorporate these ideals into the mission and values of the organization. The Lynchburg, Virginia, Police Department's (LPD) stated values consist of leadership (includes the desire to do the right thing), professionalism (part of which is lawful and ethical behavior), and dedication. And, employees easily can recall these terms because they coincide with the agency's initials. LPD prominently displays these values for community members and officers to see daily on the department's police cars, brochures, and Web site.<sup>1</sup>

Second, leaders can make the focus on ethical behavior part of organizational functions, such as formal events and internal training sessions. For instance, at every public ceremony it holds, LPD invites all sworn law enforcement officers to recite the International Association of Chiefs of Police (IACP) Oath of Honor. Public and private reminders of the importance of values, such as ethical behavior, lend them long-term credence.

Third, departments can emphasize ethical behavior in their organizational philosophy. LPD has remained committed to community policing and its focus on empowering officers to make decisions and solve problems individually and jointly with citizens. In this approach, leaders accept officers' errors, or bad decisions, as part of the learning process. Agencies must recognize that if their personnel do not make mistakes, they are not doing anything. When people take risks, failures will occur. To encourage ethical behavior amidst both right and wrong decisions, leaders must differentiate between "mistakes of the head" (honest errors resulting from a lack of training or experience) and "mistakes of the heart" (based on unethical decisions) and deal with each appropriately.<sup>2</sup>

Finally and, perhaps, most important, agencies should not tolerate unethical behavior or decision

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making. That may seem to oversimplify the issue, but, in reality, it does not. One instance of unethical conduct not dealt with appropriately can overturn all efforts at instilling the importance of ethical behavior. Organizational policy and procedure must clearly dictate that unethical conduct will not be tolerated, and leaders must deal with such behavior consistently.

### **Developing and Maintaining Ethical Leadership**

Agencies must focus their attention on both developing new leaders and maintaining the effectiveness of existing ones. *Leadership* can be defined as “an individual’s ability to influence, motivate, and enable others to contribute toward an organization’s success.”<sup>3</sup> Effective leaders care about fellow employees, the department, and the community. They must be ethical and possess the desire and ability to do the right thing no matter how hard it is.<sup>4</sup>

In terms of developing new leaders, a virtual explosion of leadership training has occurred in law enforcement over the past 5 years. Organizations, such as the IACP; the Virginia Association of Chiefs of Police (VACP)—through its training arm, the Virginia Police Chief’s Foundation; and numerous local law enforcement agencies and criminal justice academies, have implemented training aimed at developing new *leaders*, not just supervisors. Recognizing the need to enhance leadership development efforts, agencies must nurture and mentor up-and-coming individuals who eventually will lead the organization. This supports effective succession planning.

Constant improvement of leaders, the agency, and community are critical. Therefore, leadership training and development must remain at

the forefront of a department’s strategic planning efforts. The majority of programs now found in law enforcement include classroom sessions on leadership philosophy and traits, ethical behavior and decision making, and employee development and discipline. Many initiatives also focus on issues more closely tied to supervision, such as critical incident management, supervisory liability, and media relations, thereby encouraging more effective leadership among emerging supervisors.

While developing such a program may seem achievable only by large organizations with vast training budgets, this is not the case. In 2002, LPD recognized its pressing need to introduce new and developing leaders to many of the concepts previously provided only through informal mentoring or advanced training of police command staff. While informal mentoring can prove successful,

agencies cannot afford to rely on it to ensure the development of their leaders. At the same time, most departments cannot or do not commit to the creation and support of a formal mentoring program for leaders. This results in a tremendous void in a critical component of agency success.

With the cooperation of the Central Virginia Criminal Justice Academy, LPD moved forward with developing and implementing a program aimed

at providing meaningful training for new law enforcement leaders. The agency identified a 24-hour combination of leadership, ethics, and supervisory training components for developing leaders in the 62 departments represented in its regional academy. LPD used existing relationships with a number of law enforcement and academic professionals to identify instructors and make the program a reality. Sessions cover many areas of leadership and supervision.

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**...departments must incorporate an organizationwide emphasis on ethical behavior....**

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- “Laws of leadership” and traits of successful leaders
- Effective communication
- Team building
- Goals and objectives
- Ethics and ethical decision making
- Employee development and dealing with problem personnel
- Generational issues for leaders and employees
- Stress management
- Media relations
- Legal issues and supervisory liability
- Critical incident management

LPD also enhanced the program for its own personnel by developing an additional 16 hours of training aimed at better preparing them for agency-specific leadership and supervisory responsibilities. This portion comprises several sessions: department mission and values; Lynchburg city government; Special Operations Division; employee evaluation system; significant incident (internal affairs) investigations; accreditation; and unit overviews, including call-out procedures for canine, communications, criminal investigations, and vice/narcotics.

Because of interest in the training, LPD continues to prepare for new sessions. The authors

also developed a 2-day leadership course for the Virginia Center for Policing Innovation, further evidence that organizations want to adopt a proactive approach to leadership development. From a budgetary standpoint, outside of time spent arranging for instructors and appropriate lesson plans, LPD has committed no organizational or outside fiscal resources.

LPD has found that the officers who complete the training gain not only practical knowledge but also increased confidence in their ability to lead and supervise. They have a better recognition of their responsibility and the need to study leadership and ethics to be effective law enforcement leaders. The seemingly endless “revolving door” of personnel (along with knowledge and experience) that agencies face highlights the importance of opportunities, such as this leadership training program.

### **Encouraging Ethical Behavior**

Agencies must do more than develop effective leaders. Leadership instructors and mentors throughout academia have recognized the need to remain flexible in how they lead, aware of new and unique approaches to leadership, and committed to ethical behavior no matter what challenges they face. Experts have made such suggestions as adapting leadership methods to employee behavior and “sharpening the saw” by routinely

### **Law Enforcement Oath of Honor**

On my honor, I will never betray my badge, my integrity, my character, or the public trust.

I will always have the courage to hold myself and others accountable for our actions.

I will always uphold the Constitution, my community, and the agency I serve.

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*Source:* <http://www.theiacp.org>

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reevaluating if leadership efforts accomplish what agencies intend.<sup>5</sup> One law enforcement authority pointed out the criticality of understanding the changes in tactics, techniques, technology, and people.<sup>6</sup> Leaders must understand these trends and adjust to them as they are both significant and inevitable. As they deal with multiple generations of employees with unique needs and expectations, leaders cannot assume that what proved effective yesterday will work tomorrow or even today in terms of leadership and instilling ethical standards for the workforce.

During the keynote presentation at the 2007 VACP Annual Conference, the speaker emphasized the need for leaders to practice self-examination and to make changes when necessary.<sup>7</sup> This message was powerful and timely as people continue to hear of misconduct and corruption in law enforcement organizations. As most agencies pursue some form of community policing, the ability to establish strong partnerships and working relationships with citizens based on trust becomes more difficult each time police officers make unethical decisions. Strong, effective leadership requires constantly stressing, among other things, ethical behavior and living by the Oath of Honor. To achieve this, agencies must continually expose leaders to organizational and professional expectations of ethics and integrity to allow them to set high standards for their own behavior and that of their subordinates. LPD does this through training during annual supervisors' meetings, repeated emphasis on department values in goals and planning documents, and due diligence in investigating and addressing all incidents of unethical behavior.

## Conclusion

While law enforcement agencies cannot completely eliminate corruption or mistakes of the heart in the profession, leaders must concentrate on strengthening their leadership skills and abilities to create an environment in which such unacceptable behavior will occur less frequently and, when it does, will not be tolerated. They must avoid getting caught up in the day-to-day tasks required of law enforcement administrators that, while critical, can adversely affect their leadership efforts. Leaders must acknowledge their mistakes and those of subordinates and learn from them. They also must be willing to ask themselves if they are leading in a manner consistent with their values and ethics, as well as those of their organization and profession. ♦

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**Agencies must focus their attention on both developing new leaders and maintaining the effectiveness of existing ones.**  
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## Endnotes

<sup>1</sup> <http://www.lynchburgpolice.org>

<sup>2</sup> Samuel Feemster, "Spirituality: The DNA of Law Enforcement Practice," *FBI Law Enforcement Bulletin*, November 2007, 8-17.

<sup>3</sup> The authors base this definition on their work and research in the area.

<sup>4</sup> Feemster, 8-17.

<sup>5</sup> Stephen Covey, *The 7 Habits of Highly Effective People* (New York, NY: Free Press, 2004); and Kenneth Blanchard and Spencer Johnson, *The*

*One Minute Manager* (New York, NY: William Morrow, 1982).

<sup>6</sup> Ronald Ruecker, "Working Together in the Year Ahead," *The Police Chief*, November 2007.

<sup>7</sup> Stephen Gower, lecture given at the 2007 VACP Annual Conference in Williamsburg, VA.

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# Bulletin Reports

## Teen Violence

*Violence by Teenage Girls: Trends and Context*, an Office of Juvenile Justice and Delinquency Prevention bulletin, examines the involvement of girls in violent activity, including whether it has risen relative to the increase for boys, and the contexts in which girls engage in violent behavior. Available evidence based on arrest, victimization, and self-report data suggests that although girls are arrested more for simple assaults than before, the actual incidence of their being seriously violent has not changed much over the past two decades. Increases in arrests may be attributable more to modifications in enforcement policies than to changes in girls' behavior. Juvenile female involvement in violence has not increased relative to juvenile male violence. Although more information is needed, current literature indicates that girls' violence occurs within five main contexts: peer, family, school, disadvantaged neighborhoods, and gangs. While a large increase in physical violence committed by girls does not appear to exist, some girls do engage in violent behavior. Understanding the context in which such violence occurs and how these situations differ for girls and boys remains vital for both prevention and intervention efforts. To obtain the complete report (NCJ 218905), access the National Criminal Justice Reference Service's Web site at <http://www.ncjrs.org>.

## Intimate Partner Violence

*Evaluation of the Judicial Oversight Demonstration: Findings and Lessons on Implementation* discusses the Judicial Oversight Demonstration (JOD) Initiative, an effort to improve the provision of services to victims of intimate partner violence (IPV), increase victim safety, and hold offenders more accountable. JOD activities were jointly funded and managed by the Office on Violence Against Women and the National Institute of Justice (NIJ). The Urban Institute conducted an independent, multisite evaluation under a cooperative agreement with NIJ. This report, part a of series of reports on JOD, reveals some of the findings of an evaluation of the initiative and presents lessons learned about implementing court-involved IPV prevention programs. The complete report (NCJ 219077) can be obtained by accessing the National Criminal Justice Reference Service's Web site at <http://www.ncjrs.org>.



## Teen Marijuana Use

According to a report from the White House Office of National Drug Control Policy (ONDCP), teen marijuana use can worsen depression and lead to more serious mental disorders, such as schizophrenia, anxiety, and even suicide. Although marijuana use among teens has dropped by 25 percent since 2001, more teens use marijuana than all other illicit drugs combined. Moreover, the potency of smoked marijuana has risen consistently over the past decades and higher potency translates into serious health consequences for teens. *Teen Marijuana Use Worsens Depression: An Analysis of Recent Data Shows “Self-Medicating” Could Actually Make Things Worse* reveals that teens who smoke marijuana at least once a month are three times more likely to have suicidal thoughts than nonusers and that using marijuana can cause depression and other mental illnesses. In addition, while the percentage of depressed teens equals that of depressed adults, depressed teens are more likely to use marijuana and other illicit drugs. Furthermore, teen girls who use marijuana daily are more likely to develop depression than those who do not use it, and depressed teens are more likely to engage in other risky behaviors, such as daily cigarette use and heavy alcohol consumption.

ONDCP is urging parents to pay closer attention to their teen’s behavior and mood swings and to recognize that marijuana and other drugs could be playing a dangerous role in their child’s life. Parents can take some concrete steps to protect their teens from marijuana and other illicit drug use.

- Look closely at behavior (moodiness may not be just a passing phase but could signal depression or drug use)
- Recognize the warning signs of drug use and depression (carelessness with grooming, change in behavior and friends, loss of interest in daily activities, and withdrawal from family)
- Be more involved (monitor activities, ask questions and know how teens spend their time, and set limits about drug use with clear rules and consequences for breaking them)

For more information about what parents should know about the link between drug use and depression, visit <http://www.TheAntiDrug.com>. The complete version of *Teen Marijuana Use Worsens Depression: An Analysis of Recent Data Shows “Self-Medicating” Could Actually Make Things Worse* can be accessed at <http://www.theantidrug.com/pdfs/teen-marijuana-depression-report.pdf>.

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# Job Sharing

## *A Viable Option for Law Enforcement?*

By LISA PERRINE, M.P.A.



**L**aw enforcement agencies around the country are contending with a shortage of officers and trying to lure new applicants with various incentives, such as hiring bonuses, eased standards, and extra vacation time.<sup>1</sup> Several factors have contributed to the problem, including demographic changes; higher-paying positions in the homeland security

industry; more baby-boomer officers retiring; and the younger generation's advanced level of education that now often makes a career in policing, with its well-known salary shortfall, not as attractive.

These types of staffing changes and shortages could affect public safety and the well-being of law enforcement officers. "When you have single

officers in vehicles, a lack of backup, slower response time, cuts in prevention programs, and fewer school resource officers, things could obviously be affected. Also, with fewer recruits entering the system and a large number of veterans exiting, officers' street knowledge—critical to effective law enforcement—is evaporating."<sup>2</sup> What can the law enforcement

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profession do? Is job sharing a viable option that can help agencies recruit and retain employees?

## UNDERSTANDING THE CONCEPT

According to the U.S. Department of Labor, the 1990s economic expansion not only removed years of long-standing labor market problems, such as unemployment and stationary wage rates, but also increased the use of flexible work schedules. What is flexible scheduling? Simply stated, it is when an employer offers employees alternatives for defining when, where, and how the work gets accomplished. Employers can choose from many different methods or combine them in such a way that benefits both the organization and its personnel.<sup>3</sup>

As a type of flexible scheduling that employees can choose within the framework of a program established by their employer, job sharing allows two (or possibly more) workers to apportion one job. It also offers employers an opportunity to retain knowledgeable, experienced employees that they normally would lose due to such issues as family obligations, retirement, or medical concerns. While job sharing can help eliminate the need to train new personnel, it also can

aid in retaining other seasoned employees to compensate for the loss of a veteran worker. Job sharing can seem intimidating to managers, who may fear that it could lead to confusion, more paperwork, and a host of other difficulties. They can avoid these issues, however, by having a proper plan in place and holding all job sharers accountable for their duties.<sup>4</sup>

Research has indicated that job sharing can improve productivity and offer numerous benefits for both the employer and employee. As retiring baby boomers threaten to deplete corporate workforces, many organizations are taking a fresh look at the recruiting and retention advantages of this aspect of flexible scheduling.<sup>5</sup> While not the sole solution, job sharing may offer a viable option that

can help law enforcement agencies recruit and retain valuable employees.

## APPLYING IT TO LAW ENFORCEMENT

Law enforcement, like other public service professions, requires its employees to remain current with training mandates. It also harbors a traditional expectation that its personnel will use the expertise they gain to serve their citizens on a daily basis. In addition to job shortages, however, California law enforcement agencies also face challenges due to a retirement benefit that has resulted in many officers opting for early retirement and has caused a gap in efforts to retain expert personnel. The general slowing in the growth of the labor force forecast for the years ahead

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*Lieutenant Perrine serves with the Pasadena, California, Police Department.*



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may intensify this gap. As baby boomers retire, succession planning and alternate staffing strategies become even more important.<sup>6</sup>

Both employers and employees can benefit from job sharing, even in a setting with the rigorous training requirements of policing. But, would this type of work-schedule flexibility interest law enforcement professionals? Interestingly, the author's research revealed that several law enforcement agencies in other countries have job-share programs and that two California law enforcement departments also employ this strategy.

#### **California Departments**

The Huntington Beach Police Department, with 234 employees, approved job sharing in January 2001.<sup>7</sup> Proposed by an officer, the program was initially done on a trial basis. After an evaluation, however, the department approved it as a permanent arrangement. The teams are reliable, communicate well with each other and their supervisors, and make the job-share program a smooth operation. The department based these conclusions on debriefing the job sharers and their supervisors, as well as evaluating the employees' work products.

Since November 1999, the Orange County Sheriff's

Department has offered job sharing to its professional staff and deputies of the 4,000-member agency.<sup>8</sup> The program came about as a way to retain qualified employees and as a recruitment tool. Supervisors have indicated that it has worked well based on positive feedback from current job sharers and exit interviews with those who have left the program.

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#### **Canadian and European Agencies**

Many Canadian, British, and French law enforcement organizations post detailed outlines of their job-share programs on their Web sites. The Thames Valley Police Department in Great Britain has an extensive written job-sharing policy and documentation. The 19-page policy includes an appendix section that contains a formal application and other

sample forms needed to document and track job sharing. The department has experienced few problems with the application, processing, and actual job-share guidelines as all are handled in a fair and consistent manner.<sup>9</sup>

The Calgary, Canada, Police Service's Web site centers on the "employee life balance" job-share advantage, focusing on police work and family responsibilities. The site states, "juggling the commitments of police work and the responsibilities of a family is not easy." However, many officers have proven that it can be done. One constable faced the challenge of balancing her career with her family. After the birth of her second son, she decided to job share and advised, "The Calgary Police Service has been a great employer. They've worked with me to find positions in policing that accommodate my professional goals and the desire to spend time with my young family."<sup>10</sup>

The Victoria, Canada, Police Department has allowed job sharing for the past 10 years.<sup>11</sup> The Victoria Police Board and Victoria Police Union worked together to form the job-sharing letter of agreement. Of the department's 222 sworn employees, 11 job share. Initially approved for a short period, such as while children are young or to pursue educational endeavors, the program

## Advantages of Job Sharing

### **For Employees**

- Have a more balanced life and can spend more time with their families or pursue educational endeavors or personal interests.
- Experience less stress, which, in turn, increases job satisfaction and leads to greater productivity.
- Have decreased absenteeism because job sharers rely on professional child care less and are more prone to be at work, thus using less sick time.

### **For Organizations**

- Can save money because of shared benefits and less overtime costs. Job sharers can work more during busy times, thereby eliminating position-coverage overtime.
- Have more flexibility while maintaining productivity. The job-share position is covered at all times. Usually, if one job sharer is absent or goes on vacation, the other works full time for the duration.
- Can use job sharing to retain and recruit employees. Also, job sharers tend to appreciate an organization willing to offer flexible hours and, thus, do their work with dedication and enthusiasm.

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*Source: Judi Casey, Sloan Work and Family Research Network, Boston College, "Work-Family Information on Flexible Work Schedules," Effective Workplace Series, Issue 2, (2006, updated March 2008); retrieved on April 14, 2008, from [http://wfnetwork.bc.edu/pdfs/EWS\\_FlexibleSchedules.pdf](http://wfnetwork.bc.edu/pdfs/EWS_FlexibleSchedules.pdf); Harriet Hagestad, "New Ways to Work: Telecommuting and Job Sharing"; retrieved on May 26, 2006, from <http://www.careerbuilder.com/JobSeeker/careerbytes>; Carolyn Hirschman, "Share and Share Alike," HR Magazine, September 2005; retrieved on May 26, 2006, from [http://Findarticles.com/p/articles/mi\\_m3495/is\\_9\\_50/ai\\_n15627800](http://Findarticles.com/p/articles/mi_m3495/is_9_50/ai_n15627800); and Dave Shipley, "Job Sharing"; retrieved on May 26, 2006, from <http://www.magma.ca/~urbship/jobs.html>.*

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has expanded to a permanent lifestyle program because of demographics, a struggle to retain qualified employees, and a realization that the department was missing a segment of the population during recruitment. Administratively, the program has worked well. In terms of scheduling, however, work flow

sometimes can stumble. According to job sharers, keeping up with changes in laws and maintaining training standards represent the only challenges. Overall, they enjoy the program and acknowledge that they would have had to resign if not for job sharing. The success of the program is based on the

productivity and satisfaction of the job sharers and the length of time the program has existed.

### **COMPARING SURVEYS**

As a way to determine the extent of interest in job sharing, the author examined the results of a study conducted by a human resources consulting

service.<sup>12</sup> The firm surveyed 8,693 employees from 18 core industry groups that ranged from marketing, education, healthcare, and information technology to nonprofit, government, and retail. Asked if they would consider job sharing as an employment option now or in the future, 72 percent of respondents said yes.

Next, to assess possible issues of implementing job sharing in policing, the author polled members of her department, a mid-sized law enforcement agency located in the San Gabriel Valley of California, regarding their interest in job sharing now and by the year 2016. Based on the responses of 78 participants, the survey showed that a balance between work and life was the motivator for individuals looking to job share. The majority of employees interested in job sharing cited having young children as the reason. Others gave pursuing educational endeavors as another. In a similar vein, the respondents in the consulting service's report cited balancing either family needs, such as caring for children or elderly parents, or educational goals with work. The two surveys also remained consistent in the area of employees who might seek job sharing in the future as a transition into retirement by moving from full-time to

part-time employment for an agreed period.

Overall, the author found three primary advantages to job sharing. First, organizations can engage directly with the issue of work-life balance as part of their overall retention and attraction strategies. Next, job sharing can allow flexibility without putting career progression on hold. Third, job sharing

**“...organizations can engage directly with the issue of work-life balance as part of their overall retention and attraction strategies.”**

can become an effective segue to retirement. In addition, the author determined that three basic disadvantages existed. First, organizations may resist the idea because they fear additional administrative and training costs.<sup>13</sup> Second, job sharers may feel that they achieve proportionately more than full-time employees and, thus, receive inadequate pay.<sup>14</sup> Third, individuals sharing positions may be impacted by the actions of their partners.<sup>15</sup> However, the author

found that ongoing communication, consistent accountability, and solid job-share policies and procedures can eliminate these concerns.

## CONCLUSION

With the emergence of the millennial generation and competition with the private sector for potential job candidates, law enforcement agencies must commit to offering flexible work schedules. They need to recognize the benefits that such practices can offer to both the organization and personnel. To maintain a viable workforce, the law enforcement profession must consider alternatives to traditional methods of attracting and retaining competent, vibrant, and dedicated employees. Job sharing constitutes one option. ♦

## Endnotes

<sup>1</sup> John Pomfret, “Police Finding It Hard to Fill Jobs,” *Washington Post*, March 26, 2006; retrieved on April 17, 2006, from <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/26>.

<sup>2</sup> Ibid.

<sup>3</sup> Amber O’Brien, “Flexible Work Schedules: A Growing Trend,” *Business Women*, May 2004; retrieved on October 25, 2006, from <http://www.snohomish-countybusinessjournal.com/archive/bw04/obrienbw04.htm>.

<sup>4</sup> Reference for Business, “Job Sharing”; retrieved on May 26, 2006, from <http://www.referenceforbusiness.com/small/Inc-Mail/Job-Sharing.html>.

<sup>5</sup> Carolyn Hirschman, “Share and Share Alike,” *HR Magazine*, September 2005;





# Focus on Forensics

## ***The Effects of DNA Advances on Police Property Rooms***

By William P. Kiley, M.S.



**A**gencies gain valuable investigative leads upon discovering DNA matches.<sup>1</sup> And, for these instances, they rely on the property room to properly store the necessary biological evidence and have it ready for investigators. To this end, the increase in dependence on DNA analysis has impacted evidence and property rooms across the country. In the coming years, federal, state, and local law enforcement agencies will continue to face challenges in the warehousing of evidence.

### **DNA Matches**

Throughout the past decade, departments increasingly have created cold case units that review old, unsolved homicides and sexual assaults to determine if any biological evidence exists that could yield valuable DNA. Usually, investigators begin with a review of the case file to identify evidence collected and stored in the department's property and evidence storage facility.

Subsequently, law enforcement personnel may view the evidence and decide whether to send it to the crime laboratory for DNA analysis and submission to CODIS (Combined DNA Index System) for possible identification of a suspect.<sup>2</sup> If the process proves successful, it will result in the closure of an unsolved crime. The physical evidence, which may have been in a property facility for years, that leads to this discovery then becomes the crucial component in solving this case.

### **Space Limitations**

Since its inception in 1992, the Innocence Project has focused on the exoneration of wrongly convicted individuals through postconviction DNA analysis.<sup>3</sup> As of May 2008, 216 individuals have had their convictions overturned based on DNA evidence.

Similar to unsolved cases, the postconviction appeals and DNA examinations resulted from laboratory analysis of evidence held by a department in its property room. Many law enforcement agencies store evidence from criminal prosecutions only until the time period for appeals has ended and then dispose of it. However, because of the work of the Innocence Project and the growing number of exonerations resulting from DNA proving the conviction of the wrong person, legislators throughout the United States have begun to incorporate or change statutes regarding the period of postconviction retention of evidence in certain categories of crimes (e.g., homicides and sexual assaults). Some states now mandate that law enforcement agencies retain evidence for the entire incarceration period of the convicted person.<sup>4</sup>

These changes also have affected statutes of limitation for prosecution. In many jurisdictions, statutes of limitation for sexual assaults have either been completely eliminated or extended, perhaps, to decades in duration.

As a result of these effects on postconviction appeals and statutes of limitation, property rooms store evidence far longer than ever before. Now,

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police chiefs and sheriffs commonly request additional budget to either build or rent space for storage. Also, considering that crime scene investigators bring in increasing quantities of DNA evidence because of advances in crime laboratory capabilities, the present and future demands for space are obvious.

### Future Challenges

Chiefs and sheriffs must face not only fiscal and space allocation challenges but the fact that the day-to-day operation of evidence and property storage facilities will become an area of greater scrutiny by defense attorneys. If investigators discover a DNA match pertaining to a cold case based on DNA evidence retrieved from garments, bedding, weapons, or other items stored in a police property room, challenges will arise pertaining to packaging, storage, accountability and security, and access control. Chain-of-custody challenges, claims of cross-contamination, and inquiries as to climate-control conditions during the period of storage of the evidence all will become matters of examination by the defense. Therefore, to help ensure successful prosecutions, law enforcement agencies must review their procedures, provide sufficient funding for adequate storage, ensure proper training for personnel, have necessary oversight and internal controls in place, and conduct regular internal and external audits of the property room.

### Proactive Measures

Police executives need to join together regionally and statewide to become proactive regarding legislation and funding for the storage of evidence. Discussion among chiefs, sheriffs, prosecutors, and court clerks can determine future needs concerning the maintenance of the ever-growing amount

of evidence in police property rooms. Dialogue among law enforcement and crime laboratory directors can determine future needs for refrigeration or freezing of biological evidence during storage. State sheriffs' and police chiefs' associations should consider the feasibility of state-run, climate-controlled facilities in different regions that can provide long-term storage of evidence. The proactive input of these groups is essential in gaining funding assistance from state legislators.

### Conclusion

The challenges of determining the proper methods, location, and duration of evidence storage will increase with time. Sheriffs and chiefs are only beginning to experience the effects that advances in DNA technology have on the storage of evidence.

In many cases, the identification, arrest, prosecution, and conviction of a suspect and the ability to withstand appeal challenges all may rest upon stored physical evidence. Clearly, law enforcement agencies must address the staffing, training,

and funding issues pertaining to police property rooms. ♦

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### Endnotes

<sup>1</sup> For additional information, see Jim Markey, “After the Match: Dealing with the New Era of DNA,” *FBI Law Enforcement Bulletin*, October 2007, 1-4.

<sup>2</sup> CODIS is a DNA database that compares forensic samples among cases and between offenders and arrestees. For more information, visit <http://www.fbi.gov/hq/lab/html/codis1.htm>.

<sup>3</sup> <http://www.innocenceproject.org>

<sup>4</sup> For information on Colorado HB 1397, which serves as an example, see <http://www.colorado.gov/cs/Satellite/GovRitter/GOVR/1210756530100>.

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*Mr. Kiley retired as deputy chief of the Suffolk County, New York, Police Department.*

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# Leadership Spotlight

## Leaders Make a Connection

**R**ecently, I provided leadership training to 45 law enforcement officers from Ukraine, Moldova, and Hungary. One block of instruction focused on the concept that leaders need to “model the way” and set the example for those they intend to lead. The idea readily applies to leaders whether they are in law enforcement, the military, the educational system, or our communities. One way we can model the way is by sharing stories, generally a common occurrence in our lives but also how we as leaders and people can make a more meaningful and deeper connection.

A discussion I facilitated regarding the tragic events surrounding the September 11, 2001, terrorist attacks aptly highlighted this idea. I showed the attendees a video that a friend from the New York City Police Department had made and distributed in the weeks following the tragedies. The intent of the presentation was to elicit an emotional response from the group prior to them engaging in a problem-solving exercise relating to law enforcement challenges. Following the video, I shared some of my own and my squad’s experiences as federal law enforcement officers serving in Manhattan during those horrific events. I briefly spoke about the psychological effects that witnessing those scenes can have on people and how it can impact every aspect of their lives.

The attendees then broke into groups to complete their assigned exercise. While they

were working, one of them, a young police officer who looked a little distressed, approached me. The officer shared his own story of how he recently had lost a good friend, boss, and mentor to a violent crime. He spoke about how guilty he felt for not being able to do more to try and save their lives. He related that although no one had found fault with his actions, he had quickly related to the psychological effects I had spoken about earlier. We then shared a few more private comments about our experiences before the group exercise ended. During the

next break, he went to his room to get a guidebook and some photos of his hometown and family that he had brought with him to remind himself of home while he was attending the training session. He eagerly shared this meaningful part of his life with me because of the emotional connection we had made.

Whether we are dealing with the public, our colleagues, or our friends and families, law enforcement leaders need to seize the initiative to model the way and, when appropriate, reach out to others by sharing stories. These deep emotional connections can help us inspire those we choose to lead to even greater achievements. ♦

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*Special Agent Robin K. Dreeke, an instructor at the Counterintelligence Training Center and an adjunct faculty member of the Leadership Development Institute, prepared this Leadership Spotlight.*

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# Avoiding Sixth Amendment Suppression

## An Overview and Update

By KENNETH A. MYERS, J.D.



**T**he impact of a defendant's confession in a criminal prosecution cannot be overstated. As described by the U.S. Supreme Court

A confession is like no other evidence. Indeed, "the defendant's own confession is probably the most probative and damaging evidence that can be admitted against

him.... [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct."<sup>1</sup>

Because confessions are such powerful evidence, defense attorneys will aggressively challenge their admissibility through a variety of

legal avenues. These challenges may include one or more of the following: 1) the confession violates the Fourth Amendment in that it is the direct result of an unreasonable search or seizure;<sup>2</sup> 2) the confession violates due process in that it was involuntarily obtained through improper police coercion;<sup>3</sup> 3) the confession violates the defendant's Fifth Amendment



Special Agent Myers is a legal instructor at the FBI Academy.

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**When analyzing Sixth Amendment right to counsel protection, one of the first concepts to be understood is the point at which an accused may assert this right.**

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privilege against self-incrimination (alleged violation of *Miranda v. Arizona*);<sup>4</sup> and 4) the confession violates the defendant's Sixth Amendment right to counsel.<sup>5</sup> This article provides an overview of the Sixth Amendment right to counsel, including a discussion of recent Supreme Court cases addressing this right, and briefly compares and contrasts this protection with the right to counsel under the Fifth Amendment's privilege against self-incrimination (*Miranda*).<sup>6</sup>

### Attachment of the Right

According to the Sixth Amendment, “[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.”<sup>7</sup> This Sixth Amendment right applies to both federal and state criminal prosecutions, inasmuch as the Supreme Court has incorporated this right

to the states through the due process clause of the Fourteenth Amendment.<sup>8</sup> The Supreme Court has limited this right, however, to all felony prosecutions and those misdemeanor cases where actual imprisonment is imposed.<sup>9</sup>

When analyzing Sixth Amendment right to counsel protection, one of the first concepts to understand is the point at which an accused may assert this right. In other words, when does the Sixth Amendment right to counsel attach? In *Rothgery v. Gillespie County, Texas*,<sup>10</sup> the Supreme Court recently reaffirmed<sup>11</sup> that the Sixth Amendment right to counsel attaches when criminal prosecution is commenced, that is at “the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.”<sup>12</sup> The rationale

behind this rule is “not mere formalism” but “a recognition of the point at which ‘the government has committed itself to prosecute,’ ‘the adverse positions of government and defendant have solidified,’ and the accused ‘finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.’”<sup>13</sup> By this definition of criminal prosecution, the Sixth Amendment right to counsel does not attach at the time of a warrantless, probable cause arrest or at the time of an arrest based upon warrant, complaint, and affidavit.<sup>14</sup> However, in such circumstances, the Sixth Amendment right to counsel later attaches at the earliest of a formal charge (indictment or information) or the defendant's initial appearance. The initial appearance is the first appearance before a judicial officer, where defendants learn the charge against them and that their liberty is subject to restriction.<sup>15</sup> The Sixth Amendment right to counsel attaches at the initial appearance, even if the prosecutor is not aware of or does not participate in this initial judicial proceeding.<sup>16</sup> In simplest terms, the Sixth Amendment right to counsel attaches at criminal prosecution, which is the earliest of indictment, information, or initial appearance.

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## Critical Stage

Once the Sixth Amendment right to counsel has attached, a defendant is entitled to the assistance of counsel at all “critical stages” of that criminal prosecution.<sup>17</sup> According to the Supreme Court, critical stages include any proceedings between the defendant and the prosecution (or agents thereof), whether the proceeding is “formal or informal, in court or out,” where counsel would help the accused “in coping with legal problems or...meeting his adversary.”<sup>18</sup>

Recognizing the important role of counsel in ensuring fairness in criminal prosecutions, the Supreme Court applies a “deliberate elicitation” standard to capture a broad range of conduct deemed to be critical stages in a criminal prosecution.<sup>19</sup> Under this standard, the Sixth Amendment is implicated when the government attempts to deliberately elicit incriminating statements from the accused once the right to counsel has attached. Government action deemed to be a critical stage includes direct interrogation,<sup>20</sup> words or action tantamount to interrogation (e.g., the infamous “Christian burial speech”),<sup>21</sup> and use of confidential human sources or undercover employees to intentionally elicit incriminating statements.<sup>22</sup> In this regard, the use of a cellblock informant to elicit incriminating

statements from an incarcerated defendant would be considered a critical stage<sup>23</sup> unless the informant merely serves as a “listening post” and makes no effort to stimulate conversation involving the charged offense.<sup>24</sup>

In addition to that conduct described as deliberate elicitation, the Supreme Court also has found that a physical lineup for the charged offense is a critical stage in a prosecution

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***...the Sixth Amendment right to counsel attaches at criminal prosecution, which is the earliest of indictment, information, or initial appearance.***

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because the attorney’s presence at a lineup can help avert prejudice and ensure a meaningful confrontation at trial.<sup>25</sup> Police conduct not deemed to be a critical stage for Sixth Amendment right to counsel purposes includes the taking of handwriting exemplars,<sup>26</sup> fingerprints, blood samples, clothing, or hair;<sup>27</sup> the showing of a photo display;<sup>28</sup> and requests for consent to search.<sup>29</sup> Other critical stages (but of more

significance to prosecutors than to law enforcement officers) include preliminary hearings,<sup>30</sup> plea hearings,<sup>31</sup> and competency hearings.<sup>32</sup>

## Warnings and Waivers

If a defendant’s Sixth Amendment right to counsel has attached and there is a critical stage, then the defendant’s attorney must be present or the defendant must knowingly, intelligently, and voluntarily waive the right for the incriminating evidence to be admissible.<sup>33</sup> The warnings that suffice for waiver of *Miranda* rights also are sufficient to waive the defendant’s Sixth Amendment right to counsel.<sup>34</sup> Defendants do not have to be specifically advised that they are waiving the Sixth Amendment right to counsel, inasmuch as the sum and substance of the Sixth Amendment protection is set forth in the traditional *Miranda* warnings.<sup>35</sup>

## Invocation of Right

As set forth above, once the Sixth Amendment right to counsel has attached, a defendant must be provided assistance of counsel or knowingly, intelligently, and voluntarily waive the right for every critical stage of the charged criminal proceeding. If defendants invoke their Sixth Amendment right to counsel instead of waiving the right, the government may not



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initiate contact with the defendants regarding the charged offense for the remainder of the criminal prosecution outside the presence of counsel.<sup>36</sup> If the government initiates the contact with the defendants, any subsequent waiver during a police-initiated interrogation (or other critical stage) is ineffective.<sup>37</sup> Assuming that a defendant's Sixth Amendment right to counsel has attached by way of formal charge, one direct way that a defendant may invoke the Sixth Amendment right to counsel is to request assistance of counsel at the time that law enforcement provides the required warnings prior to attempted interrogation (or other critical stage). However, there also is a less obvious way that a criminal defendant may invoke the Sixth Amendment right to counsel. This would occur at the defendant's initial appearance when the defendant is advised by the magistrate or judge of the nature of the charges and applicable constitutional rights, including the right to assistance of counsel. If the defendant requests assistance of counsel for the charged offense after such an admonition, the Sixth Amendment right to counsel is invoked. Such an invocation precludes any police-initiated interrogation or other conduct deemed to be a critical stage with the defendant for the charged offense for the duration

of the prosecution unless counsel is present.<sup>38</sup>

For example, a defendant is charged with drug trafficking and arrested by law enforcement based on a warrant, complaint, and affidavit. If the defendant requests the assistance of counsel at the initial appearance, the Sixth Amendment right to counsel is now invoked. If the defendant,

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***The warnings that suffice for waiver of Miranda rights also are sufficient to waive the defendant's Sixth Amendment right to counsel.***

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thereafter, is released on bail and no charge (indictment or information) has been filed, law enforcement would not be able to initiate an interrogation or engage in any other conduct deemed a critical stage with this defendant without the presence of counsel in regard to the charged offense without violating the Sixth Amendment right to counsel. Even if the defendant was provided the advice of rights and waived these rights, a subsequent confession would

be inadmissible because law enforcement could not initiate the contact after the defendant invoked the Sixth Amendment right to counsel at the initial appearance. Instead, a post-invocation confession would only be admissible if the defendant initiated the contact (and was properly warned of and waived these rights) or the defendant's attorney was present for the interrogation. The invocation of the Sixth Amendment right to counsel is a separate legal event from that of attachment of the right.<sup>39</sup> When the right has attached, a defendant is entitled to assistance of counsel at all critical stages of that prosecution. However, if the Sixth Amendment right to counsel has attached but the defendant has not yet invoked the right, law enforcement may still approach the defendant and obtain a lawful waiver of the right. On the other hand, if the Sixth Amendment right to counsel has attached and the defendant has invoked this right by refusing to waive the right or accepting the appointment of counsel at the initial appearance,<sup>40</sup> law enforcement may not initiate contact with the defendant regarding the charged offense for the duration of the prosecution outside the presence of counsel.

### **Offense Specific**

While the Supreme Court has interpreted the Sixth



Amendment right to counsel in broad fashion by including within its scope conduct that amounts to the deliberate elicitation of information, being “offense specific” narrows the application.<sup>41</sup> In *Texas v. Cobb*,<sup>42</sup> the Supreme Court defined the meaning of the term *offense specific*, and ruled that it does not necessarily extend to uncharged offenses factually related to the charged offense.<sup>43</sup> The Supreme Court ruled that although the term *offense* for Sixth Amendment right to counsel purposes is “not necessarily limited to the four corners of the charging instrument,”<sup>44</sup> it is synonymous with the same term as applied under the Fifth Amendment’s double jeopardy clause.<sup>45</sup> Accordingly, “where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of fact which the other does not.”<sup>46</sup> In *Texas v. Cobb*,<sup>47</sup> Raymond Levi Cobb was indicted for a local burglary and represented by counsel for this charge. Prior to the indictment, Cobb had confessed to committing the burglary but had denied any involvement in the disappearance of a woman and her infant daughter who lived at the burglarized residence. While out on bail, Cobb confessed to

his father about murdering the missing mother and girl. The father notified police, and law enforcement obtained a warrant to arrest Cobb for the murders. Prior to the custodial interrogation, the police administered warnings pursuant to *Miranda*. Cobb waived his *Miranda* rights and confessed to both murders.

Cobb sought to have his confession suppressed, claiming that law enforcement violated his Sixth Amendment right to counsel by deliberately eliciting information about criminal activity factually related to that for which he previously invoked his Sixth Amendment right to counsel. The Texas Court of Appeals agreed, holding that the Sixth Amendment right to counsel attaches not only to the offense charged but to other offenses

“closely related factually.”<sup>48</sup> The Supreme Court agreed to hear the case. The Court concurred that Cobb’s Sixth Amendment right to counsel for the burglary offense had attached at the time he was indicted. Moreover, he invoked this right by requesting assistance of counsel for the burglary charge. However, the Supreme Court held that even though the burglary and murder charges arose from the same factual situation, the charges involved different elements of proof and were separate offenses for Sixth Amendment right to counsel purposes. Therefore, an invocation of the Sixth Amendment right to counsel for the burglary charge did not bar police from interrogating Cobb about the murders, even though they were factually related.



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According to the Supreme Court, Cobb's Sixth Amendment right to counsel had not yet attached to the murders. Therefore, Cobb's confession about the murders was admissible.<sup>49</sup>

After the holding in *Texas v. Cobb*, lower courts have found the following matters to be separate offenses for Sixth Amendment purposes (and thus no Sixth Amendment violation for law enforcement conduct following the attachment or invocation of the Sixth Amendment right to counsel for the initial charges): kidnapping and murder charges factually related;<sup>50</sup> immigration fraud and witness tampering charges arising in the same fraud prosecution;<sup>51</sup> and federal and state prosecutions, even if identical in the elements of their respective offenses (recognizing the dual sovereign doctrine).<sup>52</sup>

### Comparison of Rights to Counsel

This article discusses the applicability and scope of the Sixth Amendment right to counsel. However, there is a separate and distinct right to counsel arising from the Fifth Amendment's privilege against self-incrimination. In *Miranda v. Arizona*,<sup>53</sup> the Supreme Court "established a number of prophylactic rights to counteract the 'inherently compelling

pressures' of custodial interrogation, including the right to have counsel present."<sup>54</sup> Therefore, there is a Fifth Amendment right to counsel, as well as a Sixth Amendment right to counsel. It is important to recognize the existence of these two rights to counsel and to compare and contrast their respective applicability and scope.<sup>55</sup>

***Apart from the purposes and triggering events for the two rights of counsel, another difference between the rights is the scope of their protections.***

The Fifth Amendment right to counsel is designed to protect individuals from police-dominated atmospheres and attaches at the time of custodial interrogation.<sup>56</sup> Accordingly, custody is one of the two triggering events (along with interrogation) for purposes of Fifth Amendment right to counsel analysis. Once attached, the Fifth Amendment right to counsel remains in effect as long as there is

continuous custody.<sup>57</sup> On the other hand, the purpose of the Sixth Amendment right to counsel is to "'protect the unaided layman at critical confrontations' with his 'expert adversary,' the government, after 'the adverse positions of government and defendant have solidified' with respect to a particular alleged crime."<sup>58</sup> For Sixth Amendment right to counsel purposes, custody is irrelevant. Instead, as discussed, the Sixth Amendment right to counsel attaches at criminal prosecution (the earliest of indictment, information, or initial appearance) and remains throughout the prosecution, regardless of custody.

Apart from the purposes and triggering events for the two rights of counsel, another difference between the rights is the scope of their protections. As set forth, the Sixth Amendment right to counsel is crime specific. However, the Fifth Amendment right to counsel is not. Once a subject invokes the Fifth Amendment right to counsel and remains in continuous custody, the subject "may not be reapproached regarding any offense unless counsel is present."<sup>59</sup>

Another difference between the two rights of counsel is law enforcement's ability to use undercover officers or confidential human sources once the

respective right has attached. The use of undercover officers or confidential human sources to deliberately elicit incriminating statements from an accused about a charged offense is considered a critical stage for Sixth Amendment right to counsel purposes.<sup>60</sup> On the other hand, the Supreme Court has ruled that as the government's identity is not known to the subject, such covert activity does not create a coercive, police-dominated atmosphere, which is the heart of the protection afforded by the Fifth Amendment right to counsel. Accordingly, police may use an undercover officer or cellmate informant to elicit incriminating statements when an individual is in custody and not be in violation of the Fifth Amendment right to counsel.<sup>61</sup>

Although significant differences exist between the two rights of counsel, there also are some similarities. Once either right to counsel has attached (but not yet been invoked), police may warn individuals of their rights and obtain a lawful waiver.<sup>62</sup> However, whenever an individual invokes either right to counsel, police generally may not reinitiate contact with the individual outside the presence of counsel.<sup>63</sup> Of course, once the right to counsel has attached and the individual has invoked, the person may initiate contact

with law enforcement and elect to proceed without the assistance of counsel.<sup>64</sup> Moreover, while a confession obtained in violation of either right to counsel may not be used in the prosecution's chief case, such a confession may be used to impeach a defendant's false or inconsistent testimony.<sup>65</sup>

### Conclusion

The Sixth Amendment right to counsel is just one of several constitutional protections afforded to individuals when dealing with police and prosecutors in criminal matters. As described, this right attaches once the government commits itself to prosecuting an individual, and it affords an accused the right to counsel at all critical stages of the prosecution relating to the charged offense. Once the right has

attached, police must advise the individual of this right and obtain a lawful waiver prior to eliciting information about the charged criminal activity from the subject. If the Sixth Amendment right to counsel is invoked, police may not initiate any activity considered to be a critical stage with that individual for the charged offense unless that person's attorney is present. Law enforcement officers must understand the nature and scope of this Sixth Amendment right to counsel and recognize that it is a different protection from the right to counsel afforded under the Fifth Amendment's privilege against self-incrimination. Once understood, law enforcement officers will be better equipped to deal with this challenge to the admissibility of a confession and, hopefully, avoid Sixth Amendment suppression. ♦





## Endnotes

<sup>1</sup> *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 1257 (1991); citing *Bruton v. United States*, 391 U.S., at 139-140, 88 S. Ct. at 1630 (White, J. dissenting).

<sup>2</sup> See, for example, *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254 (1975) (incustody statements that stemmed from an illegal arrest were not rendered admissible merely because defendant had been given *Miranda* warnings prior to making the statements); *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248 (1979) (Confession following arrest made without probable cause was inadmissible); *Kaup v. Texas*, 538 U.S. 626, 123 S. Ct. 1843 (2003).

<sup>3</sup> See, for example, *Arizona v. Fulminante*, 499 U.S. 279, 111 S. Ct. 1246 (1991).

<sup>4</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

<sup>5</sup> *Powell v. State of Alabama*, 287 U.S. 45, S. Ct. 55 (1932); *Massiah v. U.S.*, 377 U.S. 201, 84 S. Ct. 1199 (1964).

<sup>6</sup> This topic was addressed in previous *FBI Law Enforcement Bulletin* articles and is being reemphasized inasmuch as the protection afforded by the Sixth Amendment right to counsel often is misunderstood by law enforcement, the consequences of which may be devastating to the admissibility of a confession and overall success of a criminal prosecution. See, Kimberly A. Crawford, "The Sixth Amendment Right to Counsel Applications and Limitations," *FBI Law Enforcement Bulletin*, July 2001; and "Constitutional Rights During Interrogation, Comparing Rights Under the Fifth and Sixth Amendments," *FBI Law Enforcement Bulletin*, September 2002.

<sup>7</sup> The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the

accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." U.S. CONST. amend. VI.

<sup>8</sup> *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963).

<sup>9</sup> *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006 (1972); *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158 (1979).

<sup>10</sup> 128 S. Ct. 2578 (2008).

<sup>11</sup> See, for example, *Michigan v. Jackson*, 475 U.S. 625, 106 S. Ct. 1404 (1986); *Brewer v. Williams*, 430 U.S. 387, 97 S. Ct. 1232 (1977).

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<sup>12</sup> *Supra* note 10, at 2583.

<sup>13</sup> *Id.*, quoting *Kirby v. Illinois*, 406 U.S. 682, 689, 92 S. Ct. 1877, 1882 (1972).

<sup>14</sup> See, for example, *United States v. Gouveia*, 467 U.S. 180, 190, 104 S. Ct. 2292, 2298 (1984) ("...[W]e have never held that the right to counsel attaches at the time of arrest."); *United States v. Alvarado*, 440 F.3d 191, 200 (4th Cir. 2006), cert. denied; 549 U.S. 817 (2006) ("The filing of a federal complaint does not commence a formal prosecution.... The filing of a federal complaint, therefore, can no more be characterized as 'the initiation of adversary judicial proceedings against the defendant'...than can the filing of an affidavit in support of a search warrant."); *United States v. Boskic*, 545 F.3d 69, 83 (1st Cir.

2008) ("The Supreme Court has never elaborated on what instruments beyond indictment and information would constitute a 'formal charge' for purposes of the Sixth Amendment. However, every circuit that has considered the issue has concluded that a federal complaint does not qualify as such, primarily because of its limited role as the precursor to an arrest warrant.... We agree with these courts....").

<sup>15</sup> *Supra* note 10, at 2592.

<sup>16</sup> *Id.* at 2584.

<sup>17</sup> *Id.* at 2591.

<sup>18</sup> *Id.*

<sup>19</sup> See, for example, *Fellers v. United States*, 540 U.S. 519, 124 S. Ct. 1019 (2004).

<sup>20</sup> *Michigan v. Jackson*, at 630.

<sup>21</sup> *Brewer v. Williams*, at 399. In

*Brewer*, two police officers were responsible for transporting the defendant, who was accused of murdering a young girl, by automobile approximately 160 miles from the location of his arrest to the location of the crime. While en route, the officers sought to obtain incriminating statements from the defendant (contrary to an agreement made with the defendant's attorney) by exploiting the fact that he was a former mental patient and was deeply religious. The police encouraged the defendant to show them the location of the victim's body, stating that her parents were entitled to a Christian burial for the young murder victim. Based on their prompting, the defendant led the police to the victim's body, which was used as evidence in his murder prosecution. The Supreme Court found this activity to be a deliberate attempt by police to elicit incriminating statements from a defendant tantamount to formal interrogation. Because the defendant's Sixth Amendment right to counsel had attached and had been invoked (and the defendant had not waived the right), this evidence was obtained in violation of the Sixth Amendment right to counsel and was suppressed.

<sup>22</sup> *Massiah v. United States*, at 206; see also *Maine v. Moulton*, 474 U.S. 159, 106 S. Ct. 477 (1985).



<sup>23</sup> *United States v. Henry*, 447 U.S. 264, 100 S. Ct. 2183 (1980).

<sup>24</sup> *Kuhlmann v. Wilson*, 477 U.S. 436, 106 S. Ct. 2616 (1986).

<sup>25</sup> *United State v. Wade*, 388 U.S. 218, 87 S. Ct. 1926 (1967).

<sup>26</sup> *Gilbert v. California*, 388 U.S. 263, 87 S. Ct. 1951 (1967).

<sup>27</sup> *United States v. Wade*, 388 U.S. 218, 227, 87 S. Ct. 1926, 1933 (1967).

<sup>28</sup> *United States v. Ash*, 413 U.S. 300, 321, 93 S. Ct. 2568, 2579 (1973).

<sup>29</sup> *United States v. Kon Yu-Leung*, 910 F.2d 33 (2nd Cir. 1990).

<sup>30</sup> *United States v. Lott*, 433 F.3d 718, 723 (10th Cir. 2006), cert. denied, 549 U.S. 851 (2006).

<sup>31</sup> *Iowa v. Tovar*, 541 U.S. 77, 87, 124 S. Ct. 1379 1387 (2004).

<sup>32</sup> *Appel v. Horn*, 250 F.3d 203, 215 (3rd Cir. 2001).

<sup>33</sup> *Patterson v. Illinois*, 487 U.S. 285, 108 S. Ct. 2389 (1988).

<sup>34</sup> *Id.* at 298.

<sup>35</sup> *Id.* at 299.

<sup>36</sup> *Michigan v. Jackson*, at 635.

<sup>37</sup> *Id.* at 636; see also *McNeil v. Wisconsin*, 501 U.S. 171, 111 S. Ct. 2204 (1991).

<sup>38</sup> *Id.*

<sup>39</sup> See, for example, *Michigan v. Jackson*, 475 U.S. 625, 106 S. Ct. 1404 (1986); *Maine v. Moulton*, 474 U.S. 159, 106 S. Ct. 477 (1985).

<sup>40</sup> See also *United States v. Harrison*, 213 F.3d 1206 (9th Cir. 2000) where the Ninth Circuit Court of Appeals held that in limited and well-defined circumstances, a defendant invokes the Sixth Amendment right to counsel as a matter of law when (1) the defendant retains counsel on an ongoing basis to assist with a pending investigation, (2) the government knows, or should know, that the defendant has ongoing legal representation relating to the subject of that investigation, and (3) the eventual indictment brings charges precisely anticipated by the scope of the pre-indictment investigation.

<sup>41</sup> *Texas v. Cobb*, 532 U.S. 162, 121 S. Ct. 1335 (2001).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 168-175.

<sup>44</sup> *Id.* at 173.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*, citing *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180 (1932).

<sup>47</sup> 532 U.S. 162, 121 S. Ct. 1335 (2001).

<sup>48</sup> *Cobb v. State*, 93 S.W.3d 1 (2000).

<sup>49</sup> *Id.* at 173-174.

<sup>50</sup> *Henderson v. Quarterman*, 460 F.3d 654 (5th Cir. 2006), cert. denied, 127 S. Ct. 1383 (2007).

<sup>51</sup> *United States v. Mir*, 535 F.3d 351 (4th Cir. 2008).

**“Another difference between the two rights of counsel is law enforcement’s ability to use undercover officers or confidential human sources once the respective right has attached.”**

<sup>52</sup> See, for example, *United States v. Alvarado*, 440 F.3d 191 (4th Cir. 2006), cert. denied, 549 U.S. 817 (2006); *United States v. Avants*, 278 F.3d 510 (5th Cir. 2002), cert. denied, 122 S. Ct. 2683 (2002); *United States v. Coker*, 433 F.3d 39 (1st Cir. 2005); but see *United States v. Mills*, 412 F.3d 325 (2nd Cir. 2005) (rejecting dual sovereignty doctrine as applied in the Sixth Amendment right to counsel context); *United States v. Bird*, 287 F.3d 709 (8th Cir. 2002) (separate sovereignty does not necessarily mean separate offense for purposes of the Sixth Amendment).

<sup>53</sup> 384 U.S. 436, 86 S. Ct. 1602 (1966).

<sup>54</sup> *McNeil v. Wisconsin*, 501 U.S. 171, 176, 111 S. Ct. 2204, 2208 (1991).

<sup>55</sup> “It is necessary to treat the *Miranda* and Sixth Amendment versions of the right to counsel separately. They attach at different times, under different circumstances, for different reasons, and with different effects.” Dressler and Michaels, *Understanding Criminal Procedure*, 4th ed., Vol. 1: Investigation, page 417.

<sup>56</sup> *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966).

<sup>57</sup> *McNeil v. Wisconsin*, 501 U.S. 171, 177, 111 S. Ct. 2204, 2208 (1991) I; See also *U.S. v. Harris*, 221 F.3d 1048, 1051-1052 (8th Cir. 2000).

<sup>58</sup> *McNeil v. Wisconsin*, at 177-178, quoting *United States v. Gouveia*, 467 U.S. 180, 189 (1984).

<sup>59</sup> *Id.* at 177; see also *Arizona v. Roberson*, 486 U.S. 675, 108 S. Ct. 2093 (1988).

<sup>60</sup> *United States v. Henry*, 447 U.S. 264, 100 S. Ct. 2183 (1980).

<sup>61</sup> *Illinois v. Perkins*, 496 U.S. 292, 110 S. Ct. 2394 (1990).

<sup>62</sup> See, for example, *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966); *Patterson v. Illinois*, 487 U.S. 285, 108 S. Ct. 2389 (1988).

<sup>63</sup> For Fifth Amendment right to counsel purposes, this applies to contact about any offense as long as the individual remains in continuous custody. For Sixth Amendment right to counsel purposes, this applies to any critical stage regarding the charged offense(s) only.

<sup>64</sup> *Michigan v. Harvey*, 494 U.S. 344, 352, 110 S. Ct. 1176, 1181 (1990).

<sup>65</sup> *Id.* at 350-353.

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*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

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# ***FBI Law Enforcement Bulletin***

## **Author Guidelines**

### **GENERAL INFORMATION**

The *FBI Law Enforcement Bulletin* is an official publication of the Federal Bureau of Investigation and the U.S. Department of Justice.

**Frequency of Publication:** Monthly.

**Purpose:** To provide a forum for the exchange of information on law enforcement-related topics.

**Audience:** Criminal justice professionals, primarily law enforcement managers.

### **MANUSCRIPT SPECIFICATIONS**

**Length:** Feature articles should contain 2,000 to 3,500 words (8 to 14 pages, double-spaced). Submissions for specialized departments, such as Police Practice and Case Study, should contain 1,200 to 2,000 words (5 to 8 pages, double-spaced).

**Format:** Authors should submit three copies of their articles typed and double-spaced on 8 1/2- by 11-inch white paper with all pages numbered. An electronic version of the article saved on computer disk should accompany the typed manuscript. Authors also may e-mail articles.

Authors should supply references when quoting a source exactly, citing or paraphrasing another person's work or ideas, or referring to information that generally is not well known. For proper footnote format, authors should refer to *A Manual for Writers of Term Papers, Theses, and Dissertations*, 7th ed., by Kate L. Turabian.

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A photograph of the author(s) should accompany the manuscript. Authors can submit photos and illustrations that visually enhance and support the text. The *Bulletin* does not accept responsibility for lost or damaged photos or illustrations.

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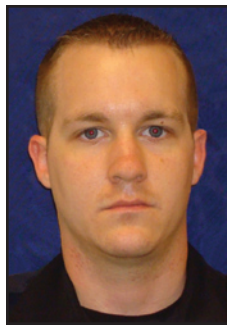
# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Roseberry

Officer Roger Roseberry of the Vinton, Iowa, Police Department responded to a house fire. Arriving several minutes ahead of the fire department, he found the second floor of the home nearly engulfed and an adult male leaning out of an upstairs window for relief from the heat and smoke. The man advised that he was afraid to jump and that two adult females remained inside. Quickly, Officer Roseberry entered the front door and found both women on the second-floor stairway and helped them outside. The intense heat and smoke did not allow him to go upstairs, so he returned outside to help the male victim. The man insisted that he could not jump, and Officer Roseberry obtained a ladder from a neighboring house, leaned it against the burning residence, and climbed to the victim. After guiding the man to the ladder, Officer Roseberry helped him to the ground. He then assisted all three victims to arriving emergency medical units.



Officer Bradley



Officer Hendrix

Officers Noah Bradley and Ricky Hendrix of the Russellville, Arkansas, Police Department responded to a report of an elderly woman being attacked by an intruder. Upon their arrival at the residence, the officers heard a man inside and instructed him to open the door. He had blood on both his clothing and a tool belt he was carrying. Once inside, Officers Bradley and Hendrix found the victim, attacked with a hammer, in a bedroom. After arresting the suspect, the officers administered first aid to the elderly woman until emergency services arrived to transport her to receive medical attention. She survived the incident.

## Wanted: Bulletin Notes

The *FBI Law Enforcement Bulletin* seeks nominations for the **Bulletin Notes**. Nominations should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Law Enforcement Communication Unit, Hall of Honor, Quantico, VA 22135.



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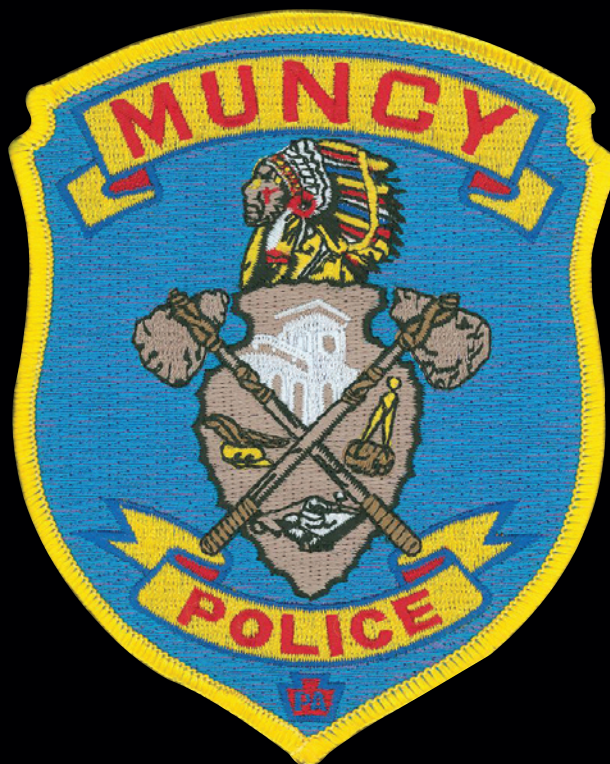
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## Patch Call



The patch of the Gladstone, Oregon, Police Department features depictions of the city's historic Pow Wow tree, the Clackamas and Willamette Rivers, and the overall richness and beauty of the land. The city's incorporation date is at the bottom.



The Muncy, Pennsylvania, Police Department serves an area with extensive Native American history. Its patch features Fort Brady; the Margaret E. Waldron Community Center; a plow, portraying the area's rich farmlands; and dividers, representing industry.